

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules of the
Pollution Control Agency for Rule
Amendments Governing Water Quality
Standards - River Eutrophication, Total
Suspended Solids and Minor Corrections
and Clarifications to Minnesota Rules 7050
and 7053

**ORDER ON THE MINNESOTA
ENVIRONMENTAL AND ECONOMIC
REVIEW BOARD AND THE MINNESOTA
SOYBEAN GROWERS ASSOCIATION'S
COMMENTS**

This rulemaking proceeding came before Administrative Law Judge James E. LaFave for a hearing on January 8, 2014.

At the hearing, the Administrative Law Judge ordered a 20-day comment period to allow the Agency and interested parties time to submit written material into the record.¹ All comments were to be posted on the Minnesota Pollution Control Agency's (MPCA) River Eutrophication/TSS Water Quality Standards webpage.

On January 28, 2014, the Minnesota Environmental Science and Economic Review Board (MESERB) timely filed comments within the initial comment period. By e-mail dated February 7, 2014, the MPCA informed the Administrative Law Judge it inadvertently failed to post MESERB's January 28, 2014 comment on the webpage.

The Minnesota Soybean Growers Association (MSGA) submitted comments to the MPCA on January 28, 2014. Since the comments were filed as part of another review process, they did not come to the attention of the Office of Administrative Hearings until February 5, 2014. These comments were not posted to MPCA's webpage.

Based upon all of the files, records and proceedings herein, and for the reasons set forth in the accompanying Memorandum,

¹ See, Minn. Stat. § 14.15, subd. 1.

IT IS HEREBY ORDERED as follows:

1. The MPCA shall post the MSGA's comment, MESERB's January 28, 2014 comment, as well as this Order, on its River Eutrophication/TSS Water Quality Standards webpage by the close of business on **February 12, 2014**.
2. All interested parties shall have until 4:30 p.m. on **February 20, 2014**, to respond to the MSGA and MESERB's submissions. Responses to any other comments will not be received into the record.
3. The MPCA shall, by the close of business on **February 12, 2014**, notify all parties who submitted comments during the initial comment period, all persons on the MPCA's official rule making list for this rule and any other commentators in this rule making process of the additional comment opportunity.

Dated: February 11, 2014

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

Issue

The law requires that an administrative law judge allow the agency and interested parties five working days to review and respond to information filed during the initial comment period.² Through an inadvertent oversight, MESERB's initial comment was not posted to the webpage so it was unavailable for review. The MSGA comment was also not posted and were not available for review. Should parties be allowed time to review and respond to the MSGA and the MESERB's submissions?

Because the rulemaking process requires that parties be allowed time to review and respond to new information filed during the initial comment period, the Administrative Law Judge concludes that posting the MSGA and the MESERB comments to the webpage and allowing parties a five working day rebuttal period is proper.

Discussion

The law is clear and unambiguous. All interested parties must be afforded the opportunity to review and respond to information submitted during the initial comment

² See, Minn. Stat. § 14.15, subd. 1; Minn. R. 1400.2230, subp. 2.

period.³ The purpose of the law is not only to allow public participation in the rulemaking process but also for the administrative law judge to benefit from the knowledge and experience of the public. In this case, the MSGA and MESERB's comments were not posted to the website, thereby depriving other parties from reviewing and responding to that information.

MPCA immediately notified the Administrative Law Judge as soon as the error was discovered and proposed the measures detailed in this Order. By posting MSGA and MESERB's comments on the webpage and allowing parties the opportunity to file comments, everyone receives the proper notice and opportunity to respond required by law. Most importantly, no one is deprived of an opportunity to meaningfully participate in the rule making process.

Finally, Minn. R. 1400.2230, subp. 3 states "The hearing record closes on the last day for receipt of written responses filed [in response to information submitted during the initial comment period]." Since the last day for receipt of written responses to information filed during the initial comment period is now February 20, 2014, the hearing record in this matter closes on that day.

J. E. L.

³ Minn. R. 1400.2230, subp. 2.